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No. 89-1440

In The

Supreme Court of the United States

October Term, 1989

KNOX COUNTY, TENNESSEE, AND
JOE FOWLER IN HIS OFFICIAL CAPACITY
AS SHERIFF OF KNOX COUNTY, TENNESSEE,

Petitioners,

v.

NED R. McWHERTER,
GOVERNOR OF THE STATE OF TENNESSEE, ET AL.,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS FOR REVIEW

1. Does the transfer of the overcrowding claim in a local jail conditions case by the Sixth Circuit from one district court to another district court which has jurisdiction over a state prison conditions case, where there are potentially conflicting remedies imposed by the district courts, for the purpose of insuring consistent remedies in both cases contravene any public policy?

2. Whether a remedial process requiring the severance and transfer of claims against state officials in a local jail conditions action to one district court presiding over state wide prison conditions litigation is consistent with decisions of this court and other courts of appeals?

3. Is the issue of whether the actions of state officials in limiting acceptance of the number of inmates sentenced to the Tennessee Department of Correction awaiting transfer in a local jail constituted the proximate cause of the unconstitutional conditions in that local facility a question of law subject to full judicial review by the Sixth Circuit or a question of fact limited to review of the record and the clearly erroneous rule?

4. Did members of the Sixth Circuit panel violate Rule 18 of the Rules of the Sixth Circuit regarding settlement conferences by holding a hearing on the proposed settlement between the original plaintiffs and state defendants when the opinions in both cases had already been drafted and the petitioners themselves advised the court of their objections to the proposed settlement?

QUESTIONS FOR REVIEW – Continued

5. Whether the severance and transfer of claims pursuant to 28 U.S.C. § 1404 against state officials in a local jail conditions action conflicts with decisions of this court and other courts of appeals?

PARTIES TO THE PROCEEDINGS BELOW

The original plaintiff in this action, Wayne Dillard Carver, who is not a petitioner before this Court, is the class representative of all persons who have been or are confined in the Knox County, Tennessee, jail facilities.

The petitioners in this case are Knox County, Tennessee, and Joe Fowler, Sheriff of Knox County, Tennessee, in his official capacity. The petitioners are the original defendants and cross-plaintiffs in this case.

Finally, the respondents in this case are Ned R. McWherter, Governor of the State of Tennessee, W. Jeff Reynolds, Commissioner of Correction of the State of Tennessee, and Deborah Miller, Executive Director of the Tennessee Parole Board, in their official capacities. The respondents are cross-defendants in this case.

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v.

NED R. McWHERTER,
GOVERNOR OF THE STATE OF TENNESSEE, ET AL.,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

The respondents respectfully request that this Court deny the petition for writ of certiorari seeking review of the decision of the United States Court of Appeals of the Sixth Circuit dated October 6, 1989. That opinion is reported as *Carver v. Knox County,* 887 F.2d 1287 (6th Cir. 1989).

STATEMENT OF THE CASE

The instant petition arises out of an action challenging conditions of confinement in the penal facilities of

Knox County, Tennessee. The petitioners are appealing the decision of the Sixth Circuit to sever and transfer all claims against the respondents from the United States District Court for the Eastern District of Tennessee to the United States District Court for the Middle District of Tennessee pursuant to Rule 53, Fed. R. Civ. P. and 28 U.S.C. § 1404(a). In order to understand the dimensions of this case, a short history of other related prison conditions litigation is important.

Since the 1970s, the State of Tennessee ("State") has been engaged in litigation over conditions in its prison system. In *Grubbs v. Bradley*, 552 F. Supp. 1052 (M. D. Tenn. 1982), and in subsequent proceedings in that same case, the district court ("*Grubbs* Court") placed a capacity limit on the number of prisoners that the State could place in its various facilities.

In 1985, State and some local facilities were seriously crowded. Because of this serious crowding which was occurring in state institutions, the *Grubbs* Court ordered the State not to accept Tennessee Department of Correction ("TDOC") sentenced prisoners into the State system unless there was space available. *See Grubbs v. Norris*, Order, October 23, 1985 (Appendix, App. 4-App. 6). In order to comply with these capacity limits, the state slowed its intake of prisoners. Overcrowding in state facilities was thus eliminated, but the number of TDOC-sentenced prisoners held in local jails began to increase.

In *Roberts v. Tennessee Department of Correction*, 887 F.2d 1281 (6th Cir. 1989), the Sixth Circuit resolved conditions litigation between county and State officials and

entered an order on October 5, 1989 approving a settlement agreement between the parties. The agreement provided for a statewide system of relief from local jail overcrowding that could be coordinated with the state prison population orders currently supervised by the *Grubbs* Court. The court held that the remedial portions of the case before it that pertained to limits on inmate populations would be transferred on remand with instructions to the *Grubbs* Court. The Sixth Circuit recommended that the remedial process established by its order be used in all future litigation in which the presence of TDOC-sentenced prisoners is alleged to be causing unconstitutional conditions. *Roberts*, 887 F.2d at 1283. This remedial process requiring the severance and transfer of TDOC-population capacity issues is referred to as the "*Roberts* process". *Id.*

On October 6, 1989, the Sixth Circuit also decided *Carver v. Knox County, Tennessee*, 887 F.2d 1287 (6th Cir. 1989), which is the instant action. In *Carver* the Sixth Circuit held that claims against the respondents would be transferred to the *Grubbs* Court, and that the district court below was to require petitioners to take appropriate and necessary remedial steps to eliminate "uniquely local" unconstitutional conditions of confinement. The Sixth Circuit denied petitioners' request for rehearing *en banc* on December 29, 1989. It is from this judgment that petition for writ of certiorari was filed with this Court.

STATUTORY PROVISION INVOLVED

The following statutory provision is relevant to this case and set forth as follows:

28 U.S.C. § 1404(a):

> For the convenience of parties and witnesses, and the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.

REASONS WHY THE PETITION SHOULD BE DENIED

I.

THE FIRST, THIRD AND FOURTH ISSUES, WHICH PRESENT QUESTIONS OF THE PROCEDURE IN TRANSFERRING CASES FROM ONE DISTRICT COURT TO ANOTHER AND THE INTERNAL RULES OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, ARE NOT OF SUFFICIENT IMPORTANCE TO JUSTIFY REVIEW BY THIS COURT.

The first, third, and fourth issues presented by the petitioners do not assert that the Sixth Circuit's decision is inconsistent with any decision of this Court or any other circuit. *See* Rule 17.1(a), Rules of the Supreme Court. On the other hand, the petitioners assert that the Sixth Circuit has "so far departed from the accepted and usual course of judicial proceedings . . . as to call for an exercise of this Court's power of supervision." *Id.*

These issues concern: (1) the action of a federal appellate court in transferring a claim under 28 U.S.C. § 1404(a) regarding overcrowding in a local jail from one

district court to another in which there is a state prisons condition case; (2) the standard of review as to whether the action of state officials in limiting the number of inmates scheduled to be transferred from a local jail to a state correctional system is the proximate cause of unconstitutional conditions in that local jail; and (3) interpretation of the internal rules of the Sixth Circuit regarding settlement conferences. It is the position of the respondents that none of these issues rise to the level which would justify review by this Court.

In the first issue, the petitioners complain that the Sixth Circuit is allowing the Knox County Jail to remain in an unconstitutional condition vis-a-vis overcrowding by allowing state officials to limit the number of inmates sentenced to the TDOC who are awaiting transfer in the Knox County Jail to be transferred to a state correctional facility. Petition for Writ of Certiorari, pp. 10-11. This conclusion is based upon the Sixth Circuit's decision to transfer the overcrowding claim in this case from the district court in Knoxville, Tennessee, to the district court in Nashville, Tennessee, which also has jurisdiction over a state prison conditions case which has been ongoing for a number of years. *Grubbs v. Norris*, 870 F.2d 343 (6th Cir. 1989). This action by the Sixth Circuit, according to the petitioners, "contravenes important public policy and mandates correction by this Court." Petition for Writ of Certiorari, p. 12.

Beyond the fact that the petitioners fail to cite any provision of the United States Constitution which they claim is violated or even any case law to support their "public policy" argument, their basic contention is erroneous. Prior to the filing of the original action by inmates

in the Knox County Jail against the petitioners and the subsequent third-party claim by the petitioners against state officials, there has been an ongoing suit in district court in Nashville, Tennessee, regarding the conditions of state correctional facilities including the issue of the overall inmate population in the system. *Grubbs, supra.* In 1985, the district court in Nashville imposed a population limitation on the state system and ordered state officials to not receive any more inmates in excess of that limit. See *Grubbs v. Norris*, Order, October 23, 1985 (Appendix, App. 1-App. 3). Subsequent to that order, the prisoner population in the Knox County Jail increased above the rated capacity, and suit was filed in district court in Knoxville by inmates against the petitioners. After the respondents were made third-party defendants in this action, the district court ordered the respondents to accept 80 inmates from the Knox County Jail within 30 days. *Carver v. Knox County*, 887 F.2d at 1289.

During this litigation, the respondents filed a motion to transfer this case to district court in Nashville so that a single district judge could provide consistent remedies in both cases. The district court in Knoxville, Tennessee, denied that motion; however, the Sixth Circuit granted the transfer, stating the following:

> This case requires us to exercise our supervisory authority over the district courts. Otherwise, the federal courts will have created an intolerable situation for the state of Tennessee contrary to the principles of comity and federalism. In effect, this action and a similar one in the Eastern District of Tennessee – *Roberts v. Reynolds* – are

> disputes between counties in the state of Tennessee rather than disputes between inmates and their custodians. We neither overlook nor excuse the fact that the state has permitted unconstitutional conditions to exist within its prison facilities. That fact was established in *Grubbs*. However, the only common sense approach to solving the statewide problem is to ensure that the authority commanding changes that will produce a constitutionally satisfactory system speaks with a single voice.

Carver v. Knox County, 887 F.2d at 1293. Contrary to the assertions of the petitioners, the action of the Sixth Circuit was not against any "public policy" but was a reasonable solution to an otherwise difficult problem.

The third issue concerns whether the actions of the state defendants in not accepting inmates from the Knox County Jail due to the population limitation order in *Grubbs* constituted the proximate cause of the unconstitutional conditions in the Knox County facility. The petitioners complain that the Sixth Circuit failed to "review and rely on the transcript of the proceedings in the District Court with the panel's consideration of facts not contained in the record constitute[d] such a departure from appropriate appellate review as to require this Court to exercise its supervisory powers by granting certiorari review." Petition for Writ of Certiorari, p. 17. The petitioners, in essence, seek to involve this Court in a review of the record in this case as to the facts surrounding the "proximate cause" issue.

It is well established by this Court that it will "not grant a certiorari to review evidence and discuss specific facts." *United States v. Johnson*, 268 U.S. 220, 227 (1925).

See also Texas v. Mead, 465 U.S. 1041 (1984). The question of what facts the Sixth Circuit should or should not have reviewed in the record is not an issue of sufficient importance to justify review by this Court.

More importantly, the question of proximate cause in this instance is not, contrary to the assertions of the petitioners, a finding of fact. Rather, it is a conclusion of law. The Sixth Circuit expressly affirmed the district court's findings of historical facts. *Carver v. Knox County*, 887 F.2d at 1293. What the panel rejected was the district court's "conclusion that all of the impermissible conditions it found present in the Knox County facilities are the direct result of the presence of TDOC-sentenced inmates." *Id.* To say that this conclusion is "not supported by the record" is to reach a legal conclusion not requiring invocation of the clearly erroneous rule.

The fourth issue concerns the petitioners' assertion that the Sixth Circuit should not have decided this case after being apprised that the petitioners were the parties who were unable to agree to settlement in this case. In particular, the petitioners cite Rule 18 of the Rules of the Sixth Circuit which provide in part the following:

> (c)(3) A judge who participates in a pre-argument conference or becomes involved in settlement discussions pursuant to this rule will not sit on a judicial panel that considers any aspect of the case except their participation in a pre-argument conference shall not preclude a judge from participating in any *en banc* consideration of the case.
>
> (c)(4) The statements and comments made during the pre-argument conference are confidential, except to the extent disclosed by the pre-

> argument conference order pursuant to Rule 18(d) and shall not be disclosed by the conference judge or conference attorney nor by counsel in briefs or arguments.

It is the position of the respondents that the interpretation of an internal rule of a federal appellate court is not a question which justifies review by this Court. The petitioners raised their concerns regarding this issue in their Petition for Rehearing *En Banc* before the Sixth Circuit. That petition for rehearing was denied. The issue of the interpretation of an internal rule of a federal appellate court is not one which justifies review by this Court. In any event, the very facts complained of by the petitioners were disclosed by petitioners' counsel at a hearing held in open court before the Sixth Circuit.

II.

THE DECISION OF THE SIXTH CIRCUIT TO TRANSFER THE OVERCROWDING CLAIM IN A LOCAL JAIL CONDITIONS CASE FROM ONE DISTRICT COURT TO ANOTHER DISTRICT COURT IN WHICH THERE IS A STATE PRISON CONDITIONS CASE IN ORDER TO PROVIDE CONSISTENT REMEDIES DOES NOT CONFLICT WITH ANY DECISION OF THIS COURT OR ANY OTHER CIRCUIT.

The second and fifth issues presented by the petitioners assert that the Sixth Circuit's decision is inconsistent with decisions of this Court and other circuits. Rule 17.1(a), Rules of the Supreme Court.

As for the second issue, the petitioners' reliance on *Benjamin v. Malcolm*, 803 F.2d 46 (2nd Cir. 1986), is misplaced. In that case, the city defendants sought joinder of

state defendants as a party in a federal civil rights action by detainees. The state refused to promptly receive state-ready prisoners. This refusal directly injured the city in that the city face contempt sanctions for failure to comply with a court order requiring the city to remedy over-crowded conditions at its detention center.

Unlike *Benjamin*, however, the petitioners are not facing any contempt sanctions for failure to comply with a court Order requiring petitioners to meet a total facility population cap at its confinement facilities.

In the instant action, the petitioners are required only to provide a status report to the court setting forth all efforts which have been undertaken by petitioners to remedy "uniquely local" constitutional violations. *See Carver v. Knox County,* Order, March 19, 1990, the court's Order does not require the petitioners to either slow or discontinue its intake of confinees.

The petitioners also contend that under *Tate v. Frey,* 735 F.2d 986 (6th Cir. 1984), the Sixth Circuit, by establishing the *Roberts* process, failed to follow its own precedent. Beyond the fact that an intra-circuit conflict is not a basis for review by this Court, the Sixth Circuit did indeed follow its own precedent. In *Tate,* the court held that the federal district court could grant a preliminary injunction against state officials upon constitutional grounds, with respect to a conditions of confinement action involving a local jail.

Here, the *Grubbs* Court enjoined respondents from accepting TDOC-sentenced prisoners into the State

system unless there was space available. Further, the *Roberts* process is the result of the parties, to a confinement conditions action, negotiating a program calculated to reduce the overcrowding and attendant unconstitutional conditions existing at a local confinement facility. Finally, the venue issue was not raised in either *Benjamin* or *Tate*.

Thus, the *Roberts* process does not divest federal district courts of jurisdiction to preside over local confinement conditions litigation. *Carver v. Knox County*, 887 F.2d at 1294, 1295. Nor will the process act as a bar to litigants seeking redress for alleged constitutional violations of local confinement. *Id*.

As for the fifth issue, the Sixth circuit's severance and transfer of injunctive relief claims against respondents pursuant to 28 U.S.C. § 1404(a) is consistent with federal statutory and constitutional law. There is support for the *Roberts* process among Courts of Appeals. *See generally In re Clements*, 881 F.2d 145, 153 (5th Cir. 1989) (transfer of remedial portion of action dealing with the removal of state sentenced prisoners to the district court presiding over the litigation of a state wide prison conditions case); *Hamilton v. Morial*, 664 F.2d 351, 353 (5th Cir. 1981) (issued writ of mandamus requiring transfer of all actions concerning overcrowding in state and local confinement facilities).

At all times relevant to the instant action, the respondents resided in the Middle District of Tennessee where the State capital is located. Venue is proper because the original plaintiffs filed an amended complaint, naming as defendants the respondents who were first brought into the action by the petitioners' third party complaint.

This Court's decision in *Hoffman v. Blanski*, 363 U.S. 335 (1960), was met here by the filing of the third party and amended complaints against the respondents, that is, the Governor and other State officials. That case, which is cited by petitioners, did not concern a third party action and amended complaint against a new set of defendants located in a different district. On the contrary, *Hoffman* concerns two party lawsuits in which each party conceded "that statutory venue did not exist over either of these actions in the respective transferee districts". *Id.* at 340-41. No such concession was made in the case decided by the Sixth Circuit here. In the instant action, the original plaintiffs brought a lawsuit against the parties residing in two different districts within the State. Thus, the Sixth Circuit's decision does not conflict with *Hoffman*.

CONCLUSION

The petitioners have failed to provide any reasons for this Court to grant the petition for writ of certiorari. No decisions of other federal circuit courts or this Court conflict with the decision of the Sixth Circuit. Accordingly, the petition for writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

SCOTTY GRUBBS, et al,	)	
Plaintiffs,	)	CIVIL NOS.
	)	80-3404 80-3518
vs.	)	80-3616 80-3617
STEPHEN H. NORRIS, et al,	)	JUDGE HIGGINS
	)	
Defendants.	)	

ORDER RESTRICTING ADMISSIONS
TO RECEPTION CENTERS

(Filed OCT 23, 1985)

For the reasons stated on the record by the court at the hearing of this case on October 23, 1985, which shall constitute the findings of fact and conclusions of law of the Court, the plaintiffs' Motion for Further Relief (filed October 2, 1985) is granted to the extent and with the exceptions set out below.

1) Effective 8:30 p.m., Central Daylight Time, October 23, 1985, the defendants are precluded from admitting any new or additional inmates into the prison system's "Reception Centers" (West Tennessee Reception Center, located in Shelby County, Tennessee; Middle Tennessee Reception Center, located in Davidson County, Tennessee; and East Tennessee Reception Center, located in Morgan County, Tennessee) until the population at one or more Reception Center is reduced to or below the "designated capacity" given for that prison in this Court's order of

October 18, 1983, as modified by this Court's Order of December 15, 1983.[1]

2) At such time as any Reception Center houses fewer inmates than its designated capacity, new or additional inmates may be admitted to that (or those) Reception Centers. Provided, however, that at no time may any Reception Center admit inmates if it is at or above its designated capacity, except as noted below.

3) The Commissioner of Correction may personally certify to the Special Master that urgent security reasons require the admission of an inmate to a reception center (or other prison facility) that is at or above its designated capacity. This certification, which shall be promptly reported to the Special Master, shall be sufficient to allow the admission of the inmate in question to a reception center (or other prison facility), other provisions of this Order to the contrary notwithstanding.

4) In other cases, if reasons of the safety of inmates, law enforcement personnel, or the public appear to necessitate the incarceration of an inmate in the state prison system, those reasons shall be communicated from the Commissioner of Correction, or his designee, to the Special Master for his prompt review and disposition. If the Special Master finds the reasons stated appear to necessitate the incarceration of the inmate in question in the state prison system, he may allow the admission of the

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[1] As stated in that Order, the designated capacities are: WTRC (not including beds in the "Annex," formerly known as Memphis Community Service Center) – 291; MTRC – 600; ETRC (excluding any housing in the minimum security "Red and White Buildings") – 313.

inmate into a reception enter (or other prison facility) that is at or above its designated capacity.

5) The parties and Special Master are directed to develope such procedures as are necessary to effectuate the provisions of this Order.

6) All other Orders previously entered in this case, except to the extent modified previously or by this Order, shall remain in full force and effect. This Court's Order of June 27, 1985, shall expressly continue in full force and effect.

ENTER this the 25th day of October, 1985.

/s/ Thomas A. Higgins
THOMAS A. HIGGINS
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
NORTHERN DIVISION

WAYNE DILLARD CARVER, *et al.*,	)	
	)	
Plaintiffs	)	Civ. 3-86-299
	)	
v.	)	
	)	
KNOX COUNTY, *et al.*,	)	
	)	
Defendants	)	

ORDER

(Filed March 19, 1990)

For the reasons set forth in the Memorandum Opinion this day passed to the Clerk for filing, the court hereby GRANTS plaintiffs' request for relief contained in their amended complaint to the extent that the court DECLARES as follows:

I. That the following conditions of confinement are unconstitutional as applied to both the pretrial detainees and the Tennessee Department of Correction ("TDOC") – sentenced inmates:

A. The overcrowded conditions;

B. The level of violence (in the drunk tank only);

C. The lack of a meaningful classification system;

D. The lack of basic necessities;

E. The lack of sanitation (in the drunk tank only);

F. The lack of meaningful indoor exercise and the lack of outdoor exercise if confined for more than one year;

G. The lack of adequate medical screening at the time of initial incarceration;

H. The lack of adequate dental care; and

I. The lack of meaningful access to the courts.

II. That the following conditions of confinement at the Knox County Jail Intake Center are unconstitutional as applied to both pretrial detainees and TDOC-sentenced inmates:

A. The overcrowded conditions;

B. The level of violence (in the drunk tank only);

C. The lack of a meaningful classification system;

D. The lack of basic necessities;

E. The lack of sanitation (in the drunk tank only);

F. An inadequate ventilation system;

G. The lack of meaningful indoor exercise and the lack of outdoor exercise if confined for more than one year; and

H. The lack of adequate medical screening at the time of initial incarceration.

III. That there presently exist no conditions of confinement at the Knox County Jail Annex which are unconstitutional as applied to either the pretrial detainees or the TDOC-sentenced inmates.

The county defendants are hereby ORDERED to provide a status report to the court within twenty (20) days from the date of this order setting forth all efforts which

have been undertaken by them since the time of this court's initial memorandum opinion and order [Docs. 132, 133] entered on January 25, 1989 regarding the above unconstitutional conditions of confinement.

ENTER:

/s/ James H. Jarvis
James H. Jarvis,
UNITED STATES DISTRICT JUDGE